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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE PUBLIC PART* OF THE 165TH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.165/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Ecuador (continued) (CAT/C/20/Add.1)

1. At the invitation of the Chairman, Mr. Pinoargote, Mr. Riofrío and Mr. Anda (Ecuador) took seats at the Committee table.

2. Mr. PINOARGOTE (Ecuador) said he agreed with the members of the Committee that the report submitted by his country (CAT/C/20/Add.1) was rather incomplete. In his replies, he would try to clarify and explain the situation in Ecuador. However, he emphasized that, although there were many selective omissions in the report, that was not because Ecuador was trying to hide something, but a result of the problem of reporting at a given time during the ongoing process of reform, which had been made necessary by the years of dictatorship.

3. For example, there was a significant legislative reform under way which had not been mentioned in the second periodic report. In December 1992, the National Congress had adopted new reforms relating primarily to the judiciary. They were far-reaching reforms, but they were not all in force as yet. One example was the new method by which members of the Supreme Court of Justice would be appointed. A two-thirds majority was needed in the National Congress for them to be appointed, whereas formerly a simple majority had been required. In a multiparty system, such as that of Ecuador, the judiciary had, however, been monopolized by a single party. Henceforth that was no longer possible. Consensus among all political forces was needed to ensure that the members of the Supreme Court were selected according to the new rules.

4. Furthermore, the "third instance" in the judiciary had been abolished. Previously, appeals could be made to a "third instance" and cases had lasted for years. At present, the Supreme Court no longer acted as a court of third instance, but as a Court of Appeal and a Constitutional Court.

5. The present Government paid close attention to all matters relating to the Constitution, contrary to what had happened during the dictatorship, which had lasted until 1983. Many laws had been enacted, introducing reforms of all kinds, and new steps were being taken to ensure that all measures adopted were in accordance with the Constitution. In that context, reforms of many laws and of the Code of Penal Procedure and the Code of Civil Procedure were now under way.

6. The renewed democratic legislative process had led to increased participation, not only by lawmakers, but also by society as a whole. Many academics were members of special committees, such as the one set up to amend the Code of Penal Procedure.

7. There were two sets of problems with regard to the Code of Penal Procedure. First of all, there were doctrinal conflicts between experts and trends in criminal law over the reforms under way. There were also vested interests at stake, including those of the police, which had hampered the

enforcement of judicial decisions during the dictatorship. Nevertheless, the stage had been set so that the guilty parties might be brought to justice and, above all, so that military judges could deal only with offences committed by military personnel in the exercise of their functions. Conflicts of jurisdiction were thus not so frequent.

8. He described the institutional structure of Ecuador's former dictatorship. It had been a great deal more than simply a personal dictatorship. At the time, many laws had been enacted to guarantee the impunity of military leaders. The transition from a dictatorship to democracy had been very difficult. In addition to the obvious political problems, the long-term legislative process now under way took time and still had not been completed. What was more, the country had been deeply shocked by the Restrepo case, when the corrupt police chief had fled after learning that a warrant had been issued for his arrest. After that case, measures had been taken that were not yet fully operational, but were helping the country to progress even though the process was slow and difficult.

9. Other problems that were plaguing the reform process included the country's economy and, in Congress, the importance of the Privatization Act. That important issue under consideration by the Congress had somewhat diverted attention from amendments to the Code of Penal Procedure and the Code of Civil Procedure, among others. A specific example of the effect of economic questions on political and legal matters was the proposal to appoint an Ombudsman responsible for human rights issues, which was regarded as an important step for the country. Purely economic reasons were behind the failure to create the post. Economic problems had once again taken precedence. He was, however, optimistic, taking encouragement from the fact that the question had at least been considered.

10. Replying to some specific questions raised by the Committee, he said that, in the event of a conflict between a provision of domestic law and an international standard, the international standard took precedence. Another question had related to the apparent contradiction between the Constitution, under which police custody could last 24 hours, and the Code of Penal Procedure, under which the period was 48 hours. According to a decision handed down by the Court of Constitutional Guarantees, the Constitution took precedence and the period was therefore 24 hours. With regard to the rights of the defence, any detainee could contact his legal counsel; that was a right guaranteed by the Constitution.

11. Referring to investigations and the role of the police, he said that pre-trial investigations were the responsibility of the police and that the judge conducted investigations during the trial. The fact that complaints about the conduct of a police officer were filed with the police was only an apparent contradiction. Even if abuses continued, the police remained the authority to which complaints were made.

12. With regard to drug-related crimes, the most delicate problems arose in small towns, where applications for habeas corpus were submitted to the mayor. Major drug traffickers were sometimes able to avoid justice by getting the mayor to release them. A new Act which applied only to drug trafficking had been promulgated in 1991 to deal with that situation. The Act, which had also

not been referred to in the report, established a special procedure for that kind of crime to prevent habeas corpus from providing a way out for such criminals. There had been a lively doctrinal debate on the abolition of habeas corpus for drug traffickers; a great deal of political pressure had been exerted to oppose the measure. However, as drug trafficking had expanded considerably and as Ecuador was increasingly being used as a stopover for the international traffic, that exceptional procedure had finally been adopted. Moreover, the problem was so serious that the United States of America and the European Community had concluded special agreements with the Andean countries to combat the drug traffic. In addition to trade and economic measures, it had been necessary to adopt for legal and penal provisions and, in individual cases, the power to grant habeas corpus had been taken out of the hands of mayors. That was the only exception to the principle of habeas corpus permitted in Ecuador.

13. As to the compensation of victims, amendments to the Penal Code were being discussed, but still had not been adopted. With regard to remedies available to victims of human rights violations, it had already been stated that such persons could appeal to the ordinary courts, the Court of Constitutional Guarantees, the Commission on Human Rights of the Congress or the Sub-Secretariat of Justice of the Ministry of the Interior. In that context, what was the role of the Commission on Human Rights of the Congress? In Ecuador, there was no single body responsible for human rights issues; it had been decided that various types of remedies should be available. In that connection, the work of the Court of Constitutional Guarantees was very important and the role of the Commission on Human Rights of the Congress was to strengthen and supplement that work. Since human rights violations were often committed by public officials, police officers or members of the military, the Sub-Secretariat of Justice had recently been set up in the Ministry of the Interior in addition to the two above-mentioned bodies. Human rights remedies were thus available in the three branches of Government. It was still possible to appeal to the Attoreney-General's Office and, among others, to the prosecutors in the various districts, who referred cases to the competent judicial authorities. A wide range of parallel remedies was deliberately made available not to complicate, but to facilitate the submission of complaints by persons whose human rights had been violated.

14. The establishment of a Judicial Police should be an important step towards the eradication of torture. The Regulations of 7 August 1992, mentioned in the report, organized the operation of the technical body which was responsible for carrying out the orders of magistrates, judges and public officials of the Attorney-General's Office. Courses had already been organized to provide the necessary training for public officials who would work in the body which would be responsible for criminal investigations instead of the National Police, which, in the past, had been guilty of human rights violations and had had genuine professional torturers in its ranks. The Judicial Police would be composed of persons with a university education, lawyers, for example, and the courses to be organized for them, and their recruitment, had been announced in the press. Nevertheless, the process was still continuing and the long-awaited Judicial Police was still not operating independently, with the result that the Crime Investigation Office, whose reputation was not very good, continued to deal with criminal matters. The highly technical nature of the future specialized police body would require

massive investments (for laboratories, etc.), which were difficult to make at present. It was also undeniable that some persons were against the establishment of the Judicial Police and opposed it on different pretexts. That was why the Judicial Police was still without resources or facilities, although it did exist on paper. The Government could very well have taken the easy way out and simply given a new name to an old institution, but it had refused to do so, preferring to proceed slowly, but surely. What was at stake was not only to protect the human rights of persons who could not defend themselves, but also to prevent people with influence, namely, high-ranking public officials, politicians, police and army officers, from using their power and the contacts available to them to escape justice, as had unfortunately often been the case in the past. Admittedly, that did not mean that the situation would be perfect once the Judicial Police was operational, but at least its activities would be more in line with what the Attorney-General's Office and the public expected of it. There was considerable eagerness for the new, improved police service to begin operations, after delays caused by the above-mentioned factors, and he hoped that international pressure and, in particular, the interest shown by the Committee would encourage the Government to persist with its project.

15. With regard to the additional information requested on certain cases, he had received information only on some of the cases submitted by Amnesty International. The Ministry of the Interior was still investigating others. In the first place, the allegations made by Mr. Cabascango were groundless, as he had never been under investigation. A group of indigenous persons had indeed been arrested for causing a public disturbance, but there had been no investigation. Mr. Cabascango and the other indigenous persons had not been ill-treated and it had been established that there was no evidence of blows or ill-treatment on their bodies. Furthermore, they had not lodged any complaints or provided any medical certificates.

16. The case of Mr. Bustos was different. The Ministry of the Interior had given no information, but the Government Procurator's Office had stated that Mr. Bustos had suffered injuries. He himself had no further information on the case nor on that of Mr. Chauvín, who had not supplied the information requested so that responsibility could be established. It had been impossible to determine whether Mr. Aguilera López had been subjected to ill-treatment. It had been pointed out that the superficial bruising on his body could have happened before he had been detained. The autopsy had also indicated the presence of meningococci in his body, as well as various other health problems.

17. He welcomed the seriousness with which the Committee had considered his country's report. Although he had been unable to answer all its questions, he assured it that the President of Ecuador was deeply concerned about human rights and was determined to maintain and develop the human rights tradition in the country. He would be sure to inform his Government of all the observations and suggestions made and the shortcomings highlighted so that it would speed up the process of legislative and administrative reform and, next time, send the Committee a more comprehensive report.

18. Mr. LORENZO (Country Rapporteur), noting the wish expressed by the representative of Ecuador that, in future his country's reports should be more comprehensive and that torture should be combated more efficiently, suggested that the Government of Ecuador should create a inter-ministerial body in which the ministries concerned, together with the Congress, the Attorney-General's Office, etc., and non-governmental organizations, would be represented. That kind of body, which had already been set up in other countries, could undertake to ensure that more detailed reports were submitted to human rights bodies of the United Nations and other international organizations and that the recommendations made by those bodies were followed up.

19. The delegation of Ecuador withdrew.

The public meeting was suspended at 4.05 p.m. for consideration of the draft conclusions on the second periodic report of Ecuador; it resumed at 5.05 p.m.

The Committee's conclusions on the second periodic report of Ecuador (CAT/C/20/Add.1)

20. At the invitation of the Chairman, the delegation of Ecuador took seats at the Committee table.

21. Mr. LORENZO (Country Rapporteur) read out the Committee's conclusions to the delegation of Ecuador:

"1. The Committee against Torture considered the periodic report of Ecuador at its 164th and 165th meetings, on 15 November 1993, and adopted the following conclusions:

I. Introduction

2. The Committee thanks the State party for its report and its sincere cooperation in the constructive dialogue established with the Committee. It takes note of the information submitted in the report and in the oral introduction by the delegation of Ecuador.

3. Ecuador has fulfilled its obligation to submit a periodic report under article 19 of the Convention. Its next report is due on 29 April 1997.

II. Positive aspects

4. The Committee appreciates the firm commitment of the Government of Ecuador to the promotion and protection of human rights and in particular its efforts to eradicate all forms of torture.

5. It also appreciates the efforts made by Ecuador to modernize its legislation (Constitution, Penal Code, Code of Penal Procedure and Act on the Attorney-General's Office) and to establish a Judicial Police, which will be the only public body responsible for criminal investigation, under the direct supervision of independent magistrates.

III. Subjects of concern

6. The Committee is nevertheless concerned by the many allegations received from various non-governmental organizations concerning torture, which is reportedly practised in a number of places of detention and prisons, particularly in the premises of the Crime Investigation Office (OID).

7. The Committee is also concerned by the fact that no action has been taken on several of the recommendations it made to Ecuador in 1991, in particular those aimed at bringing all custodial measures (arrest warrants, habeas corpus) under the direct responsibility of independent members of the judiciary. In general, the Committee is concerned by the limitations which appear to be placed on the powers of the courts in Ecuador and by the existence of public officials referred to as 'judges' who are empowered to try cases without belonging to the judiciary and consequently do not provide safeguards of independence.

IV. Recommendations

8. The Committee recommends that Ecuador take fundamental and urgent steps for the complete eradication of torture and other similar treatment. To that end, the Government should ensure that all forms of torture as defined in article 1 of the Convention are offences under criminal law.

9. The Committee also encourages Ecuador to implement, within a reasonable period, the legislative reforms undertaken to place the criminal justice system (from the investigation of offences to the serving of sentences) under the supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected torture or ill-treatment."

22. Mr. PINOARGOTE (Ecuador) congratulated the Committee on the fairness of the conclusions it had formulated and promised to recommend that the Government of his country should prepare more comprehensive reports in future.

The meeting rose at 5.15 p.m.